

HOUSE BILL No. 1664

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-35-6; IC 31-33-11.5; IC 33-14-1-9; IC 35-48-4-16.

Synopsis: Pregnant women using illegal drugs. Establishes maternal and newborn drug screening protocol to standardize testing of: (1) maternal patients for drug use during pregnancy; and (2) drug impaired newborns. Provides that the purpose of the drug screening protocol is to identify patients in need of special management: (1) to avoid various medical complications and developmental and nutritional deficiencies; and (2) to aid in the specific medical management of the newborn and to initiate appropriate developmental and social follow-up of the newborn. Lists factors for a physician to consider in deciding whether to order maternal or newborn drug testing. Specifies that no single indicator justifies maternal or newborn drug testing and that the
(Continued next page)

Effective: July 1, 1999.

Dobis, Kuzman

January 21, 1999, read first time and referred to Committee on Public Health.



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decision to order the testing must be based on the physician's best medical judgment after considering the totality of the circumstances. Requires the division of family and children to do the following: (1) Develop procedures for child abuse and neglect investigations involving drug impaired fetuses and newborns. (2) Implement a plan to establish response teams for drug impaired fetuses and newborns throughout Indiana. Provides that whenever a child abuse or neglect case involves a drug impaired fetus or newborn, the local child protection service shall require the mother of the fetus or newborn to participate in a substance abuse treatment plan. Requires the response team for drug impaired infants to meet on a regular basis to: (1) review the status of the treatment plan and the progress of the family; and (2) recommend changes, if any. Requires the local child protection service to file a child in need of services petition or refer the case to the local prosecuting attorney, or both, if the mother refuses to voluntarily cooperate with the treatment plan. Provides that a person who knows or should reasonably know that the person is pregnant and knowingly or intentionally ingests cocaine, a narcotic drug, a controlled substance, marijuana, hash oil, or hashish without a valid prescription or order commits unlawful ingestion of a controlled substance, a Class D felony. Allows a prosecuting attorney to withhold prosecution against a person accused of unlawful ingestion of a controlled substance if: (1) the person agrees to the conditions of a pretrial diversion program agreement that requires the person to undergo drug abuse treatment in an approved drug abuse treatment program; and (2) the terms of the agreement are recorded in an instrument signed by the person and the prosecuting attorney and filed in the court in which the charge is pending.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1664

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-35-6 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]:

4 **Chapter 6. Protocol for Maternal and Newborn Drug Screening**

5 **Sec. 1. The maternal and newborn drug screening protocol is**
6 **established under this chapter to standardize testing of:**

7 (1) **maternal patients for drug use during pregnancy; and**

8 (2) **drug impaired newborns.**

9 **Sec. 2. The protocol is recommended for use in all clinical**
10 **settings.**

11 **Sec. 3. The purpose of the maternal drug screening protocol**
12 **developed under this chapter is to provide the obstetric and**
13 **pediatric community with clinical guidelines in an effort to identify**
14 **maternal patients in need of special management to avoid:**

15 (1) **maternal medical recovery complications;**

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- (2) pediatric postpartum complications; and
- (3) other developmental and nutritional deficiencies.

Sec. 4. Any of the following factors may indicate the need for maternal drug testing:

- (1) No prenatal care.
- (2) Late or limited prenatal care.
- (3) Suspicious maternal behavior consistent with drug usage.
- (4) Unexplained placental abruption.
- (5) Preterm labor of no obvious cause.
- (6) Intrauterine growth retardation (IUGR) with no obvious cause.
- (7) Previous known drug or alcohol abuse.
- (8) Unexplained intrauterine fatal demise.
- (9) Fetal heart rate or uterine contraction pattern consistent with a hypertonic or hypercontractile uterus.

Sec. 5. The purpose of the newborn drug screening protocol developed under this chapter is to provide a consistent approach to the identification of factors that suggest the likelihood of drug abuse during pregnancy to aid in:

- (1) the specific medical management of the newborn; and
- (2) the initiation of appropriate developmental and social follow-up of the newborn.

Sec. 6. Any of the following factors may indicate the need for newborn drug testing:

- (1) Neurological symptoms such as restlessness, tremors, sleep disorders, convulsions, irritability, hypertonicity, hypotonicity, hyperactivity, clonus, staring episodes, or nystagmus.
- (2) Gastrointestinal symptoms such as poor feeding, vomiting, diarrhea, abdominal distention, or increased sucking.
- (3) Autonomic symptoms such as a high pitched cry, sneezing, nasal discharge, skin abrasions, or unexplained rapid breathing.

Sec. 7. (a) No single indicator or group of indicators necessarily justifies ordering the maternal or newborn drug testing. The attending physician's best medical judgment based on the totality of the circumstances surrounding a maternal or newborn patient's history and medical condition must be considered in determining whether a specific case warrants the invocation of the protocol under this chapter.

(b) The list of factors in sections 4 and 6 of this chapter is not an all inclusive list, and other signs and symptoms may indicate the



1 need for maternal or newborn drug testing depending on the
2 specific clinical situation.

3 Sec. 8. If maternal or newborn drug testing is ordered, the
4 attending physician shall document in the medical record the
5 reason that the testing is ordered.

6 Sec. 9. The maternal or newborn testing must screen for
7 cocaine, lysergic acid diethylamide (LSD), heroin, amphetamines,
8 marijuana, and their derivatives.

9 Sec. 10. (a) If a pregnant woman or newborn tests positive for
10 drugs, the attending physician shall report the woman to the local
11 child protection service for placement in a substance abuse
12 treatment program in accordance with IC 31-33-11.5.

13 (b) The physician shall take all steps necessary, including the use
14 of a chain of custody, to preserve any corroborating evidence
15 indicating possible child abuse or neglect.

16 SECTION 2. IC 31-33-11.5 IS ADDED TO THE INDIANA CODE
17 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 1999]:

19 **Chapter 11.5. Treatment Response for Drug Impaired Fetuses**
20 **and Newborns**

21 **Sec. 1. The division shall do the following:**

- 22 (1) Develop procedures to be followed in child abuse and
23 neglect cases involving drug impaired fetuses and newborns.
24 (2) Implement a plan to establish response teams for drug
25 impaired fetuses and newborns throughout Indiana.

26 **Sec. 2. Whenever child abuse or neglect is alleged involving a**
27 **case of a drug impaired fetus or newborn, the county local child**
28 **protection service may contact the response team for drug**
29 **impaired fetuses and newborns and schedule an immediate**
30 **meeting.**

31 **Sec. 3. Whenever the local child protection service substantiates**
32 **child abuse or neglect involving a drug impaired fetus or newborn,**
33 **the local child protection service shall take steps necessary and**
34 **reasonable:**

- 35 (1) to protect the health and welfare of the fetus or newborn;
36 and
37 (2) to effectuate substance abuse treatment for the mother and
38 other household members.

39 **Sec. 4. The mother's success with the treatment plan is not**
40 **dependent upon:**

- 41 (1) the success or failure of any other household member who
42 may have a substance abuse problem;



- (2) the absence of treatment resources in the mother's county;
or
- (3) the mother's inability to pay for the treatment.

Sec. 5. The local child protection service shall encourage the mother's voluntary acceptance of necessary treatment plans related to:

- (1) the mother's abuse of controlled substances; and
- (2) educational services regarding the effects of abuse of the fetus.

Sec. 6. As part of the treatment plan, the local child protection service shall require that the mother submit to random testing for controlled substances.

Sec. 7. The response team for drug impaired fetuses and newborns shall meet on a regular basis to:

- (1) review the status of the treatment plan;
- (2) review the mother's progress; and
- (3) recommend any changes, if necessary.

Sec. 8. If the mother refuses to voluntarily cooperate with the treatment plans, the local child protection service shall file a child in need of services petition or refer the case to the local prosecuting attorney's office, or both.

SECTION 3. IC 33-14-1-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9.** (a) A prosecuting attorney may withhold prosecution against a person accused of violating IC 35-48-4-16 if:

- (1) the person agrees to conditions of a pretrial diversion program offered by the prosecuting attorney; and
- (2) the terms of the agreement are recorded in an instrument:
 - (A) signed by the person and the prosecuting attorney; and
 - (B) filed in the court in which the charge is pending.

(b) A pretrial diversion program agreement under subsection (a) must include conditions that the person:

- (1) undergo drug abuse treatment in a drug abuse treatment program:
 - (A) certified under IC 12-23-1-6; and
 - (B) approved by the court;
- (2) report to the prosecuting attorney at reasonable times;
- (3) answer all reasonable inquiries by the prosecuting attorney; and
- (4) promptly notify the prosecuting attorney of any change in the person's address.

(c) If an opening is not available in a drug abuse treatment



program described in subsection (b)(1) at the time a person enters into a pretrial diversion program agreement under this section, the person must agree to enter a drug abuse treatment program as soon as practicable.

(d) In addition to the conditions described in subsection (b), a pretrial diversion program agreement under this section may include other provisions reasonably related to a person's rehabilitation if the conditions are approved by the court.

(e) If a person violates a term of a pretrial diversion program agreement entered into under this section, the prosecuting attorney may proceed with the person's prosecution under IC 35-48-4-16.

SECTION 4. IC 35-48-4-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 16. A person:**

(1) who:

(A) knows; or

(B) should reasonably know;

that the person is pregnant;

(2) who knowingly or intentionally ingests:

(A) cocaine;

(B) a narcotic drug;

(C) a controlled substance; or

(D) marijuana, hash oil, or hashish; and

(3) who does not possess a valid prescription or order that:

(A) is issued by a practitioner acting in the course of the practitioner's professional practice; and

(B) specifies that the person may ingest:

(i) the cocaine;

(ii) the narcotic drug;

(iii) the controlled substance; or

(iv) the marijuana, hash oil, or hashish;

commits unlawful ingestion of a controlled substance, a Class D felony.

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